92-776

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

No. _____

HENRY SYLVESTER ZIMMER,

Petitioner,

-vs-

THE STATE OF MINNESOTA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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QUESTIONS PRESENTED FOR REVIEW

1. Is the Code of Canon Law of the Roman Catholic Church relevant evidence, given the principles announced in Jones v. Wolf, 443 U.S. 595 (1979)

2. Under Minnesota law, a bona fide belief of claim of right is a defense to a charge of criminal trespass. In the instant case, the Minnesota Supreme Court held that the Code of Canon Law could be presented only in the form of expert testimony. Did this holding impermissibly inhibit the defendant's right to present evidence of the foundation for his belief that he had the right to be on church premises?

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OPINIONS BELOW

This Petition seeks review of the judgment of the Minnesota Supreme Court delivered in a reported opinion, State v. Zimmer, 487 N.W.2d 886 (Minn. 1992), reprinted at page A-21 of the appendix. That opinion affirmed the judgment of the Minnesota Court of Appeals delivered in a reported opinion, State v. Zimmer, 478 N.W.2d 764 (Minn. Ct. App. 1991), reprinted at page A-1 of the appendix.

STATEMENT OF JURISDICTION

This petition seeks to review the judgment of the Minnesota Supreme Court filed on August 7, 1992. Neither party requested rehearing. This Court's jurisdiction is based upon 28 U.S.C. 1257

STATEMENT OF THE CASE

This is a criminal trespass case arising out of two separate incidents occurring on April 4, 1990, and July 4, 1990. On defendant's motion, the two cases

were consolidated for trial. The trial was conducted before the Honorable Spencer J. Sokoloski, Judge of District Court, Tenth Judicial District, Anoka County, Minnesota, and a jury, on January 7-8, 1991. Defendant was convicted on both counts. The Minnesota Court of Appeals, Norton, Lansing, and Short, JJ., reversed the conviction arising out of the April 4 incident, but affirmed the conviction arising out of the July 4 incident. State v. Zimmer, 478 N.W.2d 764 (Minn. Ct. App. 1991). (A. 1).[1] The Minnesota Supreme Court granted discretionary review on January 27, 1992. On August 7, 1992, the Minnesota Supreme Court affirmed the single conviction. State v. Zimmer, 487 N.W.2d 886 (Minn. 1992). (A. 21).

The evidence at issue in the instant

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[1]. Citations to the opinions printed in the Appendix to this Petition are abbreviated A. ___.

appeal was proffered by defendant prior to trial (T. 13).[2] The evidence was offered "for purposes of informing the jury what constitutes (a) a possessor, and (b) a claim of right on the part of the parishioner to attend church." (T. 13). The trial court sustained the State's objection. (T. 13). The trial court also indicated that it would sustain an objection to the same evidence being used in cross examination of witnesses:

> [Defense Counsel]: Your Honor, there is likely to be a difficulty with the conduct of the case and I intend to do it as smoothly as possible. As I have indicated, it is my contention that I have a right to present evidence on the two matters that the Court believes to be a matter of law. Accordingly, I would intend to conduct cross-examination on those issues as well as presenting evidence on it, and I think that that is important so that the Appellate Court can take a look and see

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[2]. Citations to the trial transcript are abbreviated T. ___.

> what would have been the evidence had that issue been brought in. Now--
>
> The Court: If there's a proper objection, I'm going to sustain the objection. Understand that.

(T. 14).

The Minnesota Court of Appeals held that this evidence was not relevant. 478 N.W. 2d at 766. (A. 8-9). Upon appeal to the Minnesota Supreme Court, appellant argued that such a holding violated this Court's holdings in Jones v. Wolf, 443 U.S. 595 (1979)[3] and the Establishment Clause of the First Amendment.[4]

The second federal issue, that this holding violated the defendant's due process right to present a defense, was raised in defendant's Petition for Review of Decision of Court of Appeals at page 4, citing Washington v. Texas, 388 U.S. 14 (1967).

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[3]. Appellant's Brief to the Minnesota Supreme Court at pp. 14, 16, 17.

[4]. Id. at pp. 24-25.

FACTS

This is a criminal trespass case. The Petitioner (defendant below), Henry S. Zimmer, a baptized Catholic, has been a member of the Church of the Immaculate Conception since 1969. (T. 49). The Church of the Immaculate Conception is a Roman Catholic church in Columbia Heights, Minnesota.

In recent years, Mr. Zimmer has been involved in a number of disputes with the priest, Father Walter Sochacki, over doctrinal and liturgical matters. These disputes focused on such matters as whether Holy water should be removed from the sanctuary during lent (T. 49), whether the crucifix should be cloaked during Lent (T. 49), whether a convent adjoining the church should be leased out (T. 58-59), and whether the priest was doing enough to denounce abortion. (T. 61). In addition, on or about April 3, 1990, when Mr. Zimmer was

handing out leaflets, Father Sochacki approached him and hit him with a book. (T. 53). On another occasion, Father Sochacki took a communion wafer and rammed it down Mr. Zimmer's throat, resulting in injury to Mr. Zimmer. (T. 53). The dispute came to a head on April 3, 1990, when the priest handed Mr. Zimmer the following letter:

> Dear Mr. Zimmer:
>
> During the past weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily mass. You have been a constant source of fear to many of our parishioners.
>
> With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property (City Ordinance 609.605). If you chose to return to the property, you will be arrested.
>
> It is only after long deliberation and consultation with our Parish Council that I have come to this conclusion. Your presence has been a constant intimidation and harassment over

the past two years. It is our feeling that this must stop. Please be advised of our intention.

Sincerely,

The Reverend Walter L. Sochacki
The Pastor

cc: Columbia Heights Police Department

The priest acted alone in deciding to bar and actually barring Mr. Zimmer. (T. 32). Father Sochacki never received permission from any superiors to do so. (T. 37-38). Neither the Board of Directors (T. 36, 57) nor the Parish Council (T. 40, 67) ever acted in the matter. In fact, Father Sochacki had asked his bishop for permission to bar Mr. Zimmer, but the request was denied. (T. 36, 37).

The incident at issue in this Petition took place on July 4, 1990, about three months after Mr. Zimmer received the letter purporting to bar him from his Church. Mr. Zimmer consulted with others and determined

that he had the right to attend his own church. On the Fourth of July, he went to mass. As he testified:

Q. Now again directing your attention to July 4, you attended mass that day, is that correct?

A. Yes.

Q. Did you think you could attend mass?

A. Yes, I did.

Q. Why?

A. Because I wasn't barred from the--I was a member of this parish, and part of the corporation and it's my constitutional right to go to my own church. It's my church just as much it is Father's, because when he comes, he comes with a suitcase, and when he leaves, he leaves with a suitcase. That's all he takes and that's all he gives to the parish.

(T. 56-57).

Henry Zimmer did not do anything at all disruptive during the mass. (T. 56).

After the mass had ended, Father Sochacki called the police and had Henry Zimmer tagged for trespassing.

Even though he the priest purported to bar him from the church property, Henry

Zimmer was (and continues to be) a member in good standing of the Church of the Immaculate Conception. (T. 36, Priest's Testimony). He continues to receive church mailings, except that the Priest stopped any further envelopes being sent to Mr. Zimmer. (T. 56). His son continues to be a student at the parochial school. Because of the threat of further trespassing charges, Mr. Zimmer cannot attend his son's school functions. (T. 56).

Henry Zimmer has never been excommunicated, nor been placed under interdict. (T. 36, 57, 58). He has never had the required hearing before church authorities. (T. 58, 67). When asked whether Henry Zimmer had been excommunicated, Father Sochacki testified, "Heavens, no." (T. 36).

The key issue at the trespassing trial of Henry Zimmer was whether Father Sochacki had any authority to exclude Mr. Zimmer from

Mr. Zimmer's own church. The State's primary evidence of such authority was a letter of call dated January 23, 1991. (A. 2). That letter transferred Father Sochacki to the Church of the Immaculate Conception. That letter incorporated provisions of the Code of Canon Law.

The Priest also testified to his authority in such matters: "I asked, because he was in violation of City Ordinance[5], that he not be allowed to come onto our property, which is a square block between 40th and 41st, between Quincy and Jackson." (T. 38).

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[5]. This statement implies that Henry Zimmer is some kind of zoning violation. In fact, the "City Ordinance" cited in the letter of April 3 was "City Ordinance 609.605" The City of Columbia Heights has no such ordinance number. Presumably, this is a reference to Minnesota Statute 609.605, the trespassing statute. The Priest's citation of the trespassing statute itself as legal authority to bar someone is circular logic. Under this reasoning, which bootstraps authority from the statute, anyone would have authority to bar anyone from anyone's property.

The Priest also claimed to be the "legal custodian" of the parish, (T. 38) but did not state from whence such purported authority arose.

At trial, Henry Zimmer proffered evidence tending to show that the Priest lacked authority to bar a parishioner. In the defendant's words, "It's my church just as much as it is Father's." (T. 56).

A substantial part of this evidence was the Code of Canon Law, the internal law of the Roman Catholic Church. The priest's letter of call, a State exhibit, incorporates certain provisions of the Canon law. In addition, the Articles of Incorporation of the church incorporate the Canon Law by reference.

The Code of Canon Law tends to show that the Priest does not have authority to bar a parishioner. Indeed, it appears clear that under the Canon law, a parishioner has not only a right but a <u>duty</u> to attend mass

at his local church.

Under Canons 1247 and 1248, the faithful have a duty to participate in the Mass.

And under Canon 107, this duty is to be fulfilled within the parish where one resides. Under section 1 of Canon 107, a person acquires his proper pastor on the basis of domicile. On the basis of his domicile, Henry Zimmer acquired Father Sochacki. The Commentary to that Section of the Canon law makes clear that Mr. Zimmer's priest was Father Sochacki: "The canonical mission to offer 'the care of soul' to an individual comes as the product of his or her place of residence--rather than from some other more subjective attraction of the individual to a particular pastor or liturgist." (Emphasis in original).

Canon 843 states that "sacred ministers cannot refuse the sacraments to those who ask for them at appropriate times. . . ."

Canon 912 makes this directive even more clear: "Any baptized person who is not prohibited by law can and must be admitted to Holy Communion." Canon 1221 states that "[e]ntrance to a church during the time of sacred celebrations is to be free and gratuitous."

Prior to trial, counsel for defendant offered a book containing these portions of the Canon law "for purposes of informing the jury what constitutes (a) a possessor, and (b) a claim of right on the part of the parishioner to attend church." (T. 13). The Court sustained the State's objection to this evidence. (T. 13).

After four hours of deliberations, the Jury returned a verdict of guilty on both counts. (T. 90). The Court of Appeals reversed the conviction arising out of the April 4 incident, but affirmed the conviction arising out of the July 4 mass. On the issue of the admissibility of the

Canon law, the Court of Appeals held that this evidence was irrelevant. 478 N.W.2d at 766. (A. 8-9).

The Minnesota Supreme Court granted discretionary review. It affirmed the remaining conviction and held:

> Arguably, some parts of the Code of Canon Law may have been relevant to some issues in the case, such as whether the pastor could act for the "lawful possessor." The difficulty, however, is that any potential probative value of the Code was clearly outweighed by the prejudice and confusion which would have ensued from the manner in which the defendant intended to use the evidence.

487 N.W.2d at ___. (A. 27-28). The Minnesota Supreme Court went on to hold that this evidence should have been presented by way of an expert witness.

REASONS WHY THE WRIT SHOULD ISSUE

The Court of Appeals held that this evidence was properly excluded on the grounds of irrelevance. 478 N.W.2d at 766. (A. 8-9). In doing so, the Court stated:

"Subjective reasons not related to a claimed property right are irrelevant to a claim of right." Id.

But Petitioner respectfully submits that this evidence did not relate merely to his "subjective reasons" for being on the property. This evidence went to the very heart of whether Henry Zimmer had the right to be there.

The Minnesota Supreme Court apparently agreed somewhat, because it held that this evidence was "arguably" relevant 487 N.W.2d at ___. (A. 27). The Court went on to hold, however, that the evidence was properly excluded because it should have been presented by way of expert testimony:

> Here defendant offered in evidence the entire Code consisting of 1,752 canons, most couched in terminology unfamiliar to lay people. The canons reflect a form of church governance which is hierarchical rather than congregational, again a matter not familiar to

> everyone, particularly those from a different church background. Defendant apparently intended to call the jury's attention to certain canons of his own selection, which would have required the jurors to interpret isolated provisions out of context and without any understanding of how they might interact with other canons. Also, many of the canons reflect church doctrine, which would be an invitation to the jurors to go beyond the "neutral principles of law" analysis to which civil courts are limited, Jones v. Wolf, 443 U.S. 595, 604 (1979), and to embark on matters entirely irrelevant to the case.

(A. 28-29). Petitioner respectfully submits that this was error. First of all, the trial court's ruling was very broad, and did effectively exclude expert testimony relating to the Code of Canon law. (The trial court's decision was clearly based upon the single ground of relevance, not the form of the proferred testimony).

Secondly, the proferred evidence was clearly much more than "arguably" relevant,

as held the Minnesota Supreme Court. This evidence went to the very heart of whether the Priest had the authority to exclude the Petitioner. Under the "Neutral Principles of Law" approach to Church disputes announced by this Court, and purportedly followed by the Minnesota Courts, this evidence should have been received.

Finally, one key issue was the Petitioner's subjective intent. Under Minnesota law, the jury could have returned a verdict in favor of the petitioner even if it determined that he did not have the actual right to be on the premises, as long as it found that he had a good faith belief that he had such a right. Since the petitioner's subjective intent was at issue, he had the right to present the basis for his good faith belief--namely, the excluded evidence. An expert might be able to enlighten the jury on the issue of <u>actual</u> authority. But on the issue of Petitioner's

good faith belief, Petitioner should have been able to testify himself as to the basis for his opinion. The Minnesota Supreme Court's holding--that only expert testimony could be used--thus excluded the only relevant evidence on a key issue in the case. The holding below thus directly attacked the Petitioner's right to present a defense.

I. THE EVIDENCE WAS MORE THAN ARGUABLY RELEVANT. UNDER THE EARLIER RULINGS OF THIS COURT, PURPORTEDLY FOLLOWED BY THE MINNESOTA SUPREME COURT, THIS EVIDENCE WAS EXCEEDINGLY RELEVANT ON THE ISSUE OF THE PRIEST'S AUTHORITY.

Minn. Stat. 609.605, Subd. 1(b)(3) provides:

> A person is guilty of a misdemeanor if the person intentionally:
>
> trespasses on the premises of another and, without claim of right, refuses to depart the premises on demand of the lawful possessor.

In the instant case, Mr. Zimmer's defenses were (1) that the proffered Canon

Law provisions gave him a "claim of right"; and (2) that Father Sochacki was not a "lawful possessor" so as to be able to exclude him.

The evidence of the Code of Canon Law was relevant on the issue of whether Father Sochacki was a "lawful possessor" with authority to exclude Mr. Zimmer. And under the "Neutral Principles of Law" approach announced by this Court in Jones v. Wolf, 443 U.S. 595 (1979) to adjudicate church property disputes, that evidence should have been admitted.

Under the Minnesota trespassing statute, as construed by the Minnesota Supreme Court, the "lawful possessor" must be one with authority to exclude. In State v. Quinnell, 277 Minn. 63, 67-69, 151 N.W.2d 598, 602-03 (1967), the Minnesota Supreme Court held that the one making the demand to leave must be, in some sense, the agent of the landowner.

Applying this test to the church context of the instant case, it is clear, that without some affirmative showing of authority, one parishioner would not have authority to exclude another. (Nor, for that matter, would a parishioner have authority to exclude the priest. See Lindstrom v. Tell, 131 Minn. 203, 206, 154 N.W. 969, 970 (1915)).

The holdings of the Minnesota courts in the instant case, however, implicitly presumed that the priest, by virtue of his office, has authority to exclude a parishioner. It should first be noted that this presumption is utterly unprecedented. In some cases, there is a presumption of "majority rule" within a church. See, e.g., Smith v. Riley, 424 So.2d 1166, 1171 (La. App. 1982). But even that presumption can be rebutted. Id. There is absolutely no authority for a presumption of authority to exclude on the part of the priest.

Petitioner respectfully submits that under Jones v. Wolf, 443 U.S. 595 (1979), the creation of such a presumption by the Minnesota Courts amounts to an unconstitutional establishment of religion.

Under the Canons cited above, the Priest is required to administer the sacrament to the faithful. By virtue of his domicile, Henry Zimmer acquired Father Sochacki as his proper pastor.

And the Canons also make clear that the authority to excommunicate or ban a parishioner is vested in authorities higher than the priest.

Canon 221, Section 3, states that "[t]he Christian faithful have the right not to be punished with canonical penalties except in accord with the norm of law." Exclusion from the church is clearly a "deprivation of . . . right" and, thus,

under Canon 1336, a canonical penalty[6]. And the "norm of law" does not vest authority to bar in the Parish Priest. Under Canon 1419, the diocesan bishop is the judge of first instance. And Canon 1281 states:

> With due regard for the prescriptions of their statutes, administrators invalidly posit acts which go beyond the limits and procedures of ordinary administration unless they first obtain written authority from the ordinary [the Bishop].

There is nothing in the Code of Canon Law which authorizes a priest to bar a parishioner from his own church. Indeed, the Code makes clear that the parishioner has a right--and a duty--to attend mass there. For these reasons, the Canon Law is

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[6]. This, incidentally, is the distinction which would recognize the right of a priest or usher to remove an unruly parishioner, but not to ban him. The principle is the same as the right of a police officer to remove an assaultive spouse, but vesting only in the court the right to bar his return.

exceedingly relevant on the issue of whether Father Sochacki was a "lawful possessor" of the premises. Accordingly, this evidence should not have been excluded.

It is clear that under the "neutral principles of law" approach announced in Jones v. Wolf, 443 U.S. 595 (1979), the Code of Canon Law should have been received into evidence.

The issue in the instant case is essentially one of property law or corporate membership: Did the priest have authority to exclude one of the church's members from the church property?

Had the instant case involved a corporation or organization other than a church, it is clear that evidence of internal rules would be admissible.

For example, if an individual director were expelled from a corporate boardroom by another director, or even a custodian or security guard, no one would question the

expelled director's right, if charged with trespass, to show that the person excluding him had no right to do so. It is clear that he could present evidence that, under the business's internal rules, no such authority existed. Those internal rules might include Articles of Incorporation, corporate bylaws, or other internal procedures of the corporation. See, e.g., People v. Barton, 18 A.D.2d 612, 234 N.Y.S.2d 263 (1962).

It would seem absurd if in such a case that a Court might say that only an expert could testify what such bylaws actually said. In that case, the jury would decide. No court would say what the Minnesota Supreme Court said in the instant case, that the articles of incorporation "reflect a form of [corporate] governance . . . not familiar to everyone. . . ." No court would say that the articles of incorporation were too long for the jury to read. No court would say (in apparent contradiction to the

argument that they are too long) that the defendant might try to interpret "isolated provisions out of context and without any understanding of how they might interact with other" provisions.

But in the instant case, involving a church, the Minnesota Supreme Court did say these things. In treating the church differently from any other corporation, the Minnesota Supreme Court violated the principles announced by this Court in Jones.

The "neutral principles of law" approach allows the same evidence to be presented in a church property dispute. "A neutral principle of law analysis relies upon the language of deeds, the terms of local church charters, state statutes governing the holding of church property, provisions in the constitution of the general church concerning the ownership and control of church property, explicit trust

provisions, and general rules of property law." Piletich, 328 N.W.2d at 700.

This Court, in Jones, made clear that some of the sources that must be examined by a court would include "religious documents":

> The neutral-principles method . . . requires a civil[7] court to examine certain religious documents, such as a church constitution . . . . In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms.

Jones, 443 U.S. at 604.

Petitioner concedes that the Code of Canon Law is a "religious" document. But nonetheless, because of its relevance to Henry Zimmer's defenses, the jury--not some

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[7]. The State has taken the position that the instant case is somehow distinguishable because it is a criminal case, and not a "civil" case. See, e.g., Response Opposing Petition for Review at page 4. This argument is clearly without merit. When the word "civil" is used in this context, it is clearly used as the opposite of "ecclesiastical", not as the opposite of "criminal" (nor, for that matter, "military.") See Black's Law Dictionary Ecclesiastical (5th Ed. 1983)

expert witness --had the right to scrutinize it, albeit in purely secular terms.

In the instant case, by reference to the church's internal rules--the Code of Canon Law--it is clear that Henry Zimmer had both the right and the duty to attend mass. Thus, the action of the priest in excluding him was wrong. Petitioner respectfully submits that he should have been able to present this important evidence to the jury, and that it was more than "arguably" relevant.

One of the types of documents specifically referred to in Jones was local church charters. The charter of the Church of the Immaculate Conception is its Articles of Incorporation, filed with the Minnesota Secretary of State in 1924. That document vests the power of the church, including the power to "take charge of, hold and manage all property, personal and real. . ." in a board of directors. Further, the Articles

of Incorporation state that all bylaws must be "not contrary to . . . the discipline of the Roman Catholic Church. . . ."

This latter provision of the Articles of Incorporation is worded similarly to a New York statute construed in Filetto v. St. Mary of Assumption Church, 61 Misc. 2d 278, 281, 305 N.Y.S.2d 403, 405-06 (Sup. Ct. 1969). In that case, the statute provided that the trustees of a religious corporation shall "administer [property] in accordance with the discipline, rules and usages[8] . . . of the ecclesiastical governing body."

The New York court held that this statute, which is worded almost identically to the Articles of Incorporation in the instant case, "must be read in conjunction with the Code of Canon Law of [the Roman

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[8]. See also Tempelman, 249 Minn. at 185, 81 N.W.2d at 843 (Articles of Incorporation incorporate by reference "the discipline, rules, and usages of the general denomination.")

Catholic] Church." Id. at 283, 305 N.Y.S.2d at 407.

The court went on to decide the issue of whether a merger was proper by reading the Code of Canon Law--not, of course, in religious terms, but in terms of who had authority to order the merger. Cf. Bishop and Diocese of Colorado v. Mote, 716 P.2d 85, 105-08 (Colo.), cert. denied, 479 U.S. 826 (1986) (Extensive discussion and application of Episcopal Canon Law). In both Filetto and Mote, the Canon Law was received into evidence, without the need for expert testimony.

In the instant case, too, petitioner respectfully submits that recourse should have been had to the Code of Canon Law to determine whether the priest had authority to exclude a member of the congregation.

The issue presented here is clearly more than an evidentiary point. An important Federal issue is presented: Can

state courts make presumptions about the internal workings of a church. As noted above, had the instant case involved a corporation other than a church, it would be abundantly clear that the defendant could present evidence--with or without an expert witness--that the one excluding him lacked authority to do so.

The State's evidence in the instant case proved something that was never at issue: that Father Sochacki was the Pastor of the Church of the Immaculate Conception. This scant evidence was presented to prove his purported authority to expel members from the Church.

The jury was thus allowed to base its decision upon individual notions of what a priest or minister is authorized to do. The whole question of the priest's authority was decided in a vacuum without any evidence as to what his authority actually was.

The critical evidence on this point was

proffered by the defendant, and it established that the priest lacked any authority to exclude Mr. Zimmer.

The importance of the instant case goes far beyond an evidentiary ruling. The lower courts failed to give deference to a whole body of law designed to resolve important disputes. The Roman Catholic Church has adopted rules to address the situation. The holding below does a great disservice to religion by pretending that this body of law is only arguably relevant to the very issues it was designed to resolve.

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The first reaction many might have to the instant case is that the civil courts shouldn't be deciding the internal affairs of any church. The undersigned couldn't agree more. Where possible, the courts should avoid deciding these kinds of

disputes. It is especially odious that this dispute is before the courts in the context of a criminal trespass case.

But the case is before the courts. The State of Minnesota, through its police and prosecuting attorneys, took it upon itself to take sides in a religious dispute. Based upon, perhaps, the policeman's idea of what a priest's authority is, or, perhaps, the prosecutor's notion of what a church member's authority is, the State of Minnesota decided a religious question. The powers that be presumed that a priest had the right to bar a parishioner from the church. The exclusion of the relevant evidence made that presumption irrebuttable.

Under the First Amendment of the Federal Constitution, the State of Minnesota has no business applying presumptions and personal ideas of what a priest or minister can and cannot do. "[R]eligion is too personal, too sacred, too holy, to permit

its 'unhallowed perversion' by a civil magistrate." Engel v. Vitale, 370 U.S. 421, 432 (1962). If the case is brought before the courts, then the accused has the right to show what the Priest's authority actually is.

The decision of the lower courts in this case fails to give deference where deference is due. The Roman Catholic Church, of which Henry Zimmer is a faithful member, has rules, laws, and procedures, for deciding important questions. Ignoring that body of law does no service to the cause of American religious liberty.

The Minnesota Supreme Court's opinion included two dissenting opinions. The Petitioner respectfully adopts that of Justice Yetka, wherein he stated:

> This case does not belong in a civil court, and the state should not have prosecuted it there. Once brought, however, the state had the burden of proving all the elements of the alleged offense. Both lower courts assumed, solely

> on the testimony of the priest, that the parish priest was the lawful possessor of the church property with the authority to exclude Zimmer indefinitely. This assumption was erroneous and an abuse of discretion. The majority opinion today compounds this error by making the same assumption, choosing instead to characterize Zimmer's offer of proof as irrelevant or foundationally inadequate. However, the majority's analysis is both inaccurate and inconsistent with the precedent of this court and the United States Supreme Court. In my view, the majority sidesteps the central issue in this case. Therefore, I would reverse and dismiss the charges against Zimmer.

487 N.W.2d at ___, (A. 32-33) Yetka, J., dissenting.

II. THE PETITIONER SHOULD HAVE BEEN ABLE TO TESTIFY AS TO HIS OWN UNDERSTANDING OF THE CODE OF CANON LAW. THE MINNESOTA COURT'S RULING THAT ONLY AN EXPERT COULD SO TESTIFY EFFECTIVELY CUT OFF THE PETITIONER'S RIGHT TO PRESENT HIS DEFENSE.

Under the Minnesota trespassing statute, as construed by the Minnesota Supreme Court, it is a defense if the defendant had a good faith belief that he

has the right to be on the property in question. It is not necessary for him to have actual authority to be there. And apparently, it is not even necessary for the defendant to show that his belief was reasonable, but simply that it was held in good faith.

The Minnesota Supreme Court held that the Code of Canon Law could have been presented by way of expert testimony, but not otherwise. In so holding, the Minnesota Court prevented the defendant from explaining to the jury why he--and not any expert witness--held the good faith belief he held. He was deprived of the right to present a defense.

As this Court stated in Washington v. Texas, 388 U.S. 14, 19 (1967), the accused has "the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutions's to the jury so it may decide where the truth

lies."

The defendant was not allowed to present this evidence. On the critical issue of his mental state, he was not allowed to testify as to the basis for his reasonable belief. He was not allowed to testify as to why he felt, in his words, "it's my church just as much it is Father's." (T. 56-57).

The statute under which petitioner was convicted, Minn. Stat. 609.605, Subd. 1(b)(3), provides:

> A person is guilty of a misdemeanor if the person intentionally:
>
> trespasses on the premises of another and, without claim of right, refuses to depart the premises on demand of the lawful possessor.

The "claim of right" defense to a trespassing charge was construed by the Minnesota Supreme Court in State v. Hoyt, 304 N.W.2d 884 (Minn. 1981). There are a

number of parallels between Hoyt and the instant case. But the most important similarity is that in each, the defendant received a barring letter from someone cloaked with apparent authority, but who lacked any actual authority.

The defendant in Hoyt was convicted of trespassing at a nursing home while visiting a friend. The defendant had previously received a letter from the nursing home administrator purporting to bar her from the premises. That letter was remarkably similar to the one in the instant case, invoking purported concerns about third parties:

> In view of the Center's obligation to preserve a tranquil atmosphere for patient care and employee morale, you are advised that your privilege to enter the premises of St. Mary's Rehabilitation Center has been revoked. Any future entry for any purpose will be considered a trespass and will be dealt with accordingly.

Id. at 887.

The defendant in Hoyt was convicted of trespassing. Her defense, like the defense in the instant case, was that the Administrator of the nursing home did not have authority to bar her. Instead, that authority was vested in the residents of the nursing home. The Minnesota Supreme Court reversed her conviction. In doing so, it defined the "claim of right" defense:

> The claim of right is a defense only if it is bona fide. The reason for allowing a defendant in a criminal trespass case the defense of a bona fide belief of claim of right is that the law generally does not punish persons who commit an offense without criminal intent. A bona fide belief, i.e., a good faith claim of right, negatives the criminal intent required by [the trespassing statute.]

Id. at 890.

As noted above, Mr. Zimmer's claim in this case was that the Priest had absolutely no authority to exclude him from his own church. As he testified:

Q. Did you think you could attend mass?

A. Yes, I did.

Q. Why?

A. Because I wasn't barred from the--I was a member of this parish, and part of the corporation and it's my constitutional right to go to my own church. It's my church just as much it is Father's, because when he comes, he comes with a suitcase, and when he leaves, he leaves with a suitcase. That's all he takes and that's all he gives to the parish.

(T. 56-57).

The petitioner should have been allowed to testify as to his understanding of the Code of Canon Law. The Code would have shown not only that Mr. Zimmer's belief was held in good faith, but also that he had a right, based upon the Church's internal rules, to attend his church.

All of the provisions of Canon Law discussed above relate directly to Mr. Zimmer's claim of right. Canon 1247

states:

> On Sundays and other holy days of obligation the faithful are bound to participate in the mass. . . .

(Emphasis added). And under Canons 1248 and 107, it is clear that this duty is to be fulfilled in his parish church.

Similarly, the Canons relating to ministers of the church make clear that the faithful have a right to attend mass. Canon 843 states:

> The sacred ministers cannot refuse the sacraments to those who ask for them at appropriate times, are properly disposed and are not prohibited by law from receiving them.

Also, Canon 912 states:

> Any baptized person who is not prohibited by law can and must be admitted to Holy Communion.

The commentary to this section states:

> Eligible baptized persons may and must be admitted to the Eucharist because they have a right to the sacrament in accord with canon 213.

(Emphasis in original).

These provisions of the Canon Law all gave the Petitioner a good faith belief that he had the right to attend his church. If allowed, he could have so testified. No expert in the world would have been able to tell the jury why the Petitioner thought he had such a right. Only the Petitioner was able to do so, and he was prevented by doing so by the rulings of the Minnesota Courts. For that reason, these Canons were exceedingly relevant evidence on the issue of claim of right. Accordingly, when this evidence was excluded, the Petitioner was prevented from presenting a defense. Accordingly, his Conviction should be reversed.

Since the defendant's mental state--his good faith--is an element of the offense, it is the State's burden to prove this beyond a reasonable doubt. Patterson v. New York, 432 U.S. 197, 206 (1977).

And while the State must prove this

element, Due Process demands that the defendant be given the opportunity to disprove. It was this fundamental right that was denied in the instant case: The state was allowed to present evidence and argue that Mr. Zimmer did not act in accordance with a good faith belief. However, Mr. Zimmer was not allowed to present his evidence to negate the state's.

The right to present a defense is well-settled. As this Court has stated:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as the accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. this right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967).

The judgment of the Minnesota Supreme

Court deprived the defendant of this right. For there is no way that an expert witness could testify as to how the defendant formed his opinions--how he formed his good faith belief that he had the right to attend his own church. An expert witness might have been able to testify as to whether he actually had that right. But only the defendant himself could testify as to how he formed his opinion, so that the jury could decide whether it was held in good faith.

Because he was deprived of this right, Petitioner respectfully submits that this Court should grant the writ of certiorari to review the decision of the Minnesota Supreme Court.

CONCLUSION

This case presents two important federal constitutional issues: Whether the Minnesota Courts' exclusion of this evidence

constituted an unlawful establishment of religion; and whether it violated the Petitioner's right to present a defense. Therefore, for the reasons stated herein, Petitioner respectfully prays that the Writ of Certiorari issue to review the judgment of the Supreme Court of Minnesota.

DATED this 2 day of November, 1992.

Respectfully Submitted,

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APPENDIX

Opinion of the Minnesota Court of Appeals A-1

Opinion of the Minnesota Supreme Court (Judgment of which review is sought) A-21

STATE OF MINNESOTA

IN COURT OF APPEALS

C2-91-500

Anoka County
DC File No. K5909273

Norton, Judge
Dissenting, Short, Judge

State of Minnesota,

Respondent,

vs.

Henry Sylvester Zimmer,

Appellant,

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Filed December 10, 1991
Office of Appellate Courts

S Y L L A B U S

1. Conviction for misdemeanor trespass under Minn. Stat. 609.605, subd. 1(b)(3) (Supp. 1989) requires proof that a trespasser refuses to depart after demand of the lawful possessor at the time of the trespass.

2. Claim of right, as a defense to trespass, should be based on neutral principles of law, not based on church doctrine.

Affirmed in part and reversed in part.

Considered and decided by Norton, Presiding Judge, Lansing, Judge, and Short, Judge.

O P I N I O N

Norton, Judge

This is an appeal from a judgment of conviction and sentence for misdemeanor trespass. We affirm.

FACTS

Henry Zimmer, appellant, is a baptized Roman Catholic and had been a member of Immaculate Conception Parish since

1969. In 1981, Father Sochacki was appointed pastor of the parish. Over time, appellant became dissatisfied with some of the actions and statements of Father Sochacki. Appellant confronted Father Sochacki with his disagreements on many occasions. Appellant started handing out leaflets and pamphlets at services and outside of the parish. Appellant also started carrying a two-foot crucifix with him to mass.

Father Sochacki testified at trial that he determined appellant's behavior was harmful and damaging to the parish and the rest of the parishioners. He had consulted with his bishop for advice on what should be done. His bishop did not specifically authorize Father Sochacki to bar appellant from the parish, but instead suggested to just let things go and things would work out.

Father Sochacki also consulted with the

parish council regarding his concerns about appellant's behavior. Father Sochacki testified that it was his decision alone, but in consultation with the parish council, to finally bar appellant from parish property.

On April 3, 1990, Father Sochacki hand delivered a letter to appellant. The letter stated in part:

> [D]uring the past weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily mass. You have been a constant source of fear to many of our Parishioners.
>
> With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property * * *. If you chose [sic] to return to the property, you will be arrested.

While hand delivering the letter to appellant, Father Sochacki also verbally told appellant what the letter said and told him he was not welcome on parish property

any more.

On April 4, 1990, the day after the letter was received by appellant, appellant entered the parish school. When appellant entered the school, Father Sochacki saw him, went up to him, and told him that he had to leave. While Father Sochacki went to call the police, appellant left the school and waited in his car. The police arrived and after speaking with Father Sochacki went to appellant and tagged him for trespass.

On July 4, 1990, appellant returned to the parish to participate in mass. Father Sochacki asked appellant to leave but did not interrupt mass and went ahead with the service. However, at the conclusion of the service, Father Sochacki issued a citizen's arrest and the police later tagged appellant for trespass.

After a jury trial, appellant was convicted on two counts of trespass for the April 4th and July 4th incidents.

Appellant's sentence was a $200 fine and one year probation conditioned on his obeying the letter from Father Sochacki and staying off parish property for one year.

ISSUES

I. Did the trial court erroneously limit the evidence that appellant could present at trial?

II. Did the trial court abuse its discretion by refusing to allow appellant's three witnesses to testify?

III. Was the admission of Judge Roith's testimony prejudicial error?

IV. Do the facts of the April 4 incident support a conviction for trespass?

V. Was the court's sentence an abuse of its discretion?

ANALYSIS

I.

Appellant was convicted of misdemeanor trespass under Minn. Stat. 609.605, subd. 1(b)(3) (Supp. 1989) which says:

> (b) A person is guilty of a misdemeanor if the person intentionally:
>
> * * * *
>
> (3) trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor.

A. Canon law.

Appellant first argues that his claim of right relied on the Code of Canon Law and that the trial court erred by refusing to receive the code as evidence. The trial court's evidentiary rulings are reviewed under an abuse of discretion standard. State v. Flores, 418 N.W.2d 150,

158 (Minn. 1988). Although the trial court did not explain its reason for refusing the code, it appears that the reason was irrelevance.

The trial court did not err by excluding canon law. Subjective reasons not related to a claimed property right are irrelevant to a claim of right. State v. Brechon, 352 N.W.2d 745, 750 (Minn. 1984). Later civil cases involving church property disputes further support the court's refusal to admit the code of canon law.

In Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1979), the Supreme Court approved the "neutral principles of law" approach when deciding church property disputes. Id. at 603, 99 S.Ct. at 3025. This approach relies on deeds, local church charters, and state statutes, thus avoiding the constitutional pitfalls of deciding disputes on the basis of church doctrine. Id. See also Piletich v.

Deretich, 328 N.W.2d 696, 701 (Minn. 1982) (adopting the neutral principles of law approach). Likewise, a criminal court should avoid deciding disputes on the basis of church doctrine.

B. Court's comments.

Next, appellant argues that the court erroneously informed him before trial that it would rule as a matter of law that the priest was the lawful possessor and that appellant was without claim of right to be on church property.

The state had the burden of proving that the priest was the lawful possessor and that appellant was without claim of right. See Brechon, 352 N.W.2d at 750. However, even assuming that the court made erroneous statements of law:

> [A] decision will not be reversed if it is found to be harmless beyond a reasonable doubt. A ruling is prejudicial and therefore reversible if there is a reasonable possibility the error complained

of may have contributed to the conviction.

State v. Kelly, 435 N.W.2d 807, 813 (Minn. 1989) (citation omitted).

When the court made its pretrial comments, the only formal motion before it was an evidentiary issue. The only ruling that the court made was to sustain respondent's objection to the receipt of the code of canon law. Appellant has not indicated why the court's comments were prejudicial. In fact, he stated his intention before trial to go ahead and present testimony on both issues. He made no showing of any other evidence that was excluded based on the judge's comments. Further, the court went on to instruct the jury on the elements of trespass including lawful possessor and claim of right.

Appellant was allowed to testify on the issue of claim of right. He testified that

he had been a member of the parish for twenty years and that his children attended the parish school. He testified about the disagreements he had with Father Sochacki concerning the liturgy and other incidents. He testified that he entered parish property because he believed he had a right to as a member of the church. He testified he had never been excommunicated. Appellant has failed to show how the judge's pretrial comments affected the outcome of the trial. The judge's comments were harmless error and do not require reversal.

II.

In a pretrial order dated October 11, 1990 which set trial for November 19, 1990, the court ordered that no witnesses other than those listed or others disclosed to the court within seven days of the order would be allowed to testify. On January 3, 1991, appellant faxed to respondent a list

of three additional witnesses. The trial court refused to allow appellant's additional witnesses to testify, based on the October 11, 1990 order.

The refusal to allow a defendant's material witnesses to testify as a discovery sanction can violate the sixth amendment right to compulsory process. See Taylor v. Illinois, 484 U.S. 400, 410, 108 S.Ct. 646, 653 (1988). A trial court must balance the integrity of the adversary process against the "potential prejudice to the truth-determining function of the trial process." Id. at 415, 108 S.Ct. at 655.

Appellant's offer of proof regarding the witnesses was that they would testify that they were longtime members of the parish, that over the years they were in attendance at the parish when appellant was, that they did not consider his behavior disturbing and that many parishioners were

dissatisfied with Father Sochacki.[1]

Applying the balancing test from Taylor, the court's action was not prejudicial error. Appellant was clearly aware of the court's order pertaining to witnesses and had submitted a timely witness list. Appellant offered no explanation for his later request to add witnesses. Further, appellant's witnesses' testimony was of marginal relevance. Here the balance weighs on the side of protecting the integrity of the adversary system. The trial court did not abuse its discretion in excluding appellant's witnesses.

III.

> The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve

---

1. In his offer of proof, appellant indicated he only intended to call two of the witnesses he lists in his appeal. He indicated he would not call Larry Case so there is no possibility of prejudicial error regarding that witness.

the point.

Minn. R. Evid. 605.

Appellant argues that because Judge Roith presided at a dismissal in an earlier matter, he was a presiding judge and not competent to testify. However, Judge Roith was not presiding at any time when the jury was present; therefore, rule 605 did not bar his testimony. See also State v. Sandquist, 146 Minn. 322, 325-26, 178 N.W. 883, 885 (1920) (reason for rule is that judge will influence jury and deprive party of a fair trial).

Appellant also argues that the judge's testimony had no relevancy and therefore its purpose must have been to prejudice the jury against him. However, respondent had a legitimate purpose for

calling the judge on rebuttal.[2] Appellant made no showing that the judge was called in bad faith.

IV.

Appellant argues that as a matter of law, he could not be guilty of trespass for the April 4 incident because he immediately left the property when asked. We agree. Although appellant failed to raise this issue at the trial level, we address it because allowing the conviction to stand would be prejudicial error. See State v. Shamp, 427 N.W.2d 228, 230 (Minn. 1988)

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2. Appellant testified as follows:

Q Have you ever had a hearing before the church?

A No.

Q Anybody ever given you a hearing or suggested one?

A No.

The judge was on the parish council and testified that appellant had appeared before the council.

(relief from unobjected to trial error only if error is prejudicial and affects substantial rights).

Appellant was charged under section 609.605, subd. 1(b)(3) which clearly includes as an element "refuses to depart from the premises on demand of the lawful possessor." Respondent argues that to require a demand and refusal to depart as an element of the crime would lead to an absurd result. Respondent argues that the result would condone continuing trespass by individuals previously informed that they have no right to enter property. In this case, respondent argues that the letter from Father Sochacki was an advance demand to depart and that Father Sochacki did not need to further demand appellant's departure in order to show criminal trespass.

Respondent's argument is contrary to the canons of statutory construction. See Minn. Stat. 645.16 (1990) ("Every law shall

be construed * * * to give effect to all its provisions."). This is especially true in light of provision (7) of the trespass statute that could apply in the case of continuing trespass to include a person who intentionally:

> returns to the property of another with the intent to harass, abuse, or threaten another, after being told to leave the property and not to return, if the actor is without claim of right to the property or consent of one with authority to consent.

Minn. Stat. 609.605, subd. 1(b)(7) (Supp. 1989). Adopting respondent's argument would eliminate the "refusal to leave after demand" provision of (3) and make (7) unnecessary.

V.

Appellant argues that the portion of his sentence ordering him to abide by Father Sochacki's letter and stay off parish

property for one year violates his fundamental right to attend his church.

Appellant relies on State v. Friberg, 435 N.W.2d 509 (Minn. 1989). Factors that apply to test the validity of geographic exclusions as a condition of probation are:

> 1) the purpose sought to be served by probation;
>
> 2) the extent to which constitutional rights enjoyed by law-abiding citizens should be accorded to probationers, and
>
> 3) the legitimate needs of law enforcement.

Id. at 516 (citation omitted).

Here, appellant is prohibited from entering only one parish. Further, protecting other parishioners and preventing repeat offenses are legitimate objectives. The court's sentence meets the Friberg test and is not an abuse of discretion. See id. at 516-17.

Although we reverse appellant's conviction for the April 4th

incident, this does not require reversal of the sentence. See State v. Byman, 410 N.W.2d 921, 924 (Minn. App. 1987) (misdemeanor sentence will not be reversed where it was allowed by statute). Appellant's sentence was within the law and appropriate for appellant's remaining conviction. See Minn. Stat. 609.02, subd. 3 (1988) (maximum sentence for misdemeanor is $700 fine and 90 days).

D E C I S I O N

The evidence presented at trial did not support appellant's conviction for the April 4th incident. The trial court's evidentiary rulings were not an abuse of discretion. The sentence imposed by the trial court was not an abuse of discretion.

Affirmed in part and reversed in part.

Fred C. Norton 12-4-91

Short, Judge (dissenting).

I concur in the majority's decision insofar as it affirms Zimmer's conviction and sentence. I respectfully dissent as to the reversal of the April 4, 1990 trespass conviction. First, Zimmer failed to raise this issue at trial, so it is not properly before us. See State v. Kelley, 295 N.W.2d 521, 522 (Minn. 1980). Second, viewing the evidence in the light most favorable to the verdict, the jury may have found that Zimmer refused to depart the premises on April 4 upon the demand of the lawful possessor. Under these circumstances, I would affirm the trial court.

11-18-91 Marianne D. Short

STATE OF MINNESOTA

IN SUPREME COURT

C2-91-500

Court of Appeals

Simonett, J.
Dissenting, Yetka, J.
& Gardebring, J.

State of Minnesota,

Respondent,

Filed August 7, 1992
Office of
Appellate Courts

vs.

Henry Sylvester Zimmer,
petitioner,

Appellant.

S Y L L A B U S

The trial court did not err in refusing to admit into evidence the Code of Canon Law, which appellant offered as relevant to his defense against criminal trespass charges.

Affirmed.

Heard, considered, and decided by the

court en banc.

O P I N I O N

SIMONETT, Justice.

In this conviction for criminal trespass on church property, the defendant-appellant raises the single issue of whether the trial judge erred in refusing to admit the Code of Canon Law. The court of appeals held that the trial judge did not err. We agree and affirm.

Defendant Henry Zimmer is a long-time member of the Church of Immaculate Conception in Columbia Heights. Some time after Father Walter Sochacki was appointed pastor of the parish in 1981, defendant became dissatisfied with some of the pastor's liturgical practices, such as covering the crucifix during Lent. There were confrontations between the two men, and defendant began distributing leaflets at services and carrying a 2-foot cross with

him to mass.

On April 3, 1990, the pastor personally handed defendant a letter, signed by the pastor, ordering defendant to stay away from the church. The letter read:

> During the past weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily mass. You have been a constant source of fear to many of our parishioners.
>
> With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property (City Ordinance 609.605). If you chose [sic] to return to the property, you will be arrested.
>
> It is only after long deliberation and consultation with our Parish Council that I have come to this conclusion. Your presence has been a constant intimidation and harassment over the past two years. It is our feeling that this must stop. Please be advised of our intention.

At trial, the pastor testified that while he had discussed the situation with his bishop (who suggested the problem might

go away if ignored), and while he had also consulted with the Parish Council, the decision to ban defendant from church property was his decision. The pastor further testified that before issuing the letter he spoke with defendant several times and asked him to stop harassing people and making a nuisance of himself.

On April 4, 1990, the day after receiving the letter, defendant came on church property to attend a school meeting at the parish school. When the pastor reminded him of the letter, defendant left and sat in his car, where, shortly thereafter, a police officer tagged him for trespass. On July 4, 1990, defendant came to the church for mass. The pastor informed defendant "he was not welcome and he was in violation," but defendant stayed for the mass and then left. The pastor signed a citizen's arrest and defendant was issued a second tag for trespass.

Criminal complaints for violating Minn. State. § 609.605, subd.1(b)(3) were filed, and the matter came on for trial the following January. (The reference in the pastor's letter to City Ordinance 609.605 was evidently intended to be a reference to the state statute.) Before the jury was impaneled, defendant offered in evidence the Code of Canon Law "for the purpose of informing the jury what constitutes (a) a possessor, and (b) a claim of right on the part of a parishioner to attend church." The offer was rejected. The jury found defendant guilty on both counts, and he was given a $200 fine and 1 year probation conditioned on his obeying the pastor's letter.

The court of appeals dismissed the April 4 trespass conviction because defendant had immediately left the property when asked, but affirmed the second conviction. The panel reasoned that the

Code was irrelevant to defendant's claim of right and, moreover, a civil court should avoid deciding criminal matters on the basis of church doctrine as set out in the Code. State v. Zimmer, 478 N.W.2d 764 (Minn.App. 1991). We granted defendant's petition for further review.

As indicated, the only issue raised here by defendant-appellant is whether the trial court erred in refusing to admit the Code of Canon Law.

At trial, the pastor testified that he, as the duly appointed pastor of the parish, had the authority on behalf of the church as the "lawful possessor" of the church property to order defendant to stay off the property. Defendant claimed the pastor lacked this authority, and he testified he entered upon the church premises under a good faith claim of right as a parish member to attend services at the parish. The pastor testified defendant was free to

attend mass and other liturgical services at any other Catholic church.

Before addressing the legal issue, it is important to note that this case does not pose questions of church doctrine. Defendant was not barred from church property because his views about church liturgy and doctrine but because he persisted in actions which, as the pastor's letter clearly states, "have intimidated and harassed many members of our parish" and "have been a constant source of fear to many of our parishioners."

Now for the issue of the Code's relevance. Arguably, some parts of the Code of Canon Law may have been relevant to some issues in the case, such as whether the pastor could act for the "lawful possessor." The difficulty, however, is that any potential probative value of the Code was clearly outweighed by the prejudice and confusion which would have ensued from the

manner in which the defendant intended to use this evidence. Minn. R. Evid.403; Vikse v. Flaby, 316 N.W.2d 276, 285 (Minn. 1982)(affirming exclusion of evidence that would have overly confused the jury).

Here defendant offered in evidence the entire Code consisting of 1,752 canons, most couched in terminology unfamiliar to lay people. The canons reflect a form of church governance which is hierarchical rather than congregational, again a matter not familiar to everyone, particularly those from a different church background. Defendant apparently intended to call the jury's attention to certain canons of his own selection, which would have required the jurors to interpret isolated provisions out of context and without any understanding of how they might interact with other canons. Also, many of the canons reflect church doctrine, which would be an invitation to the jurors to go beyond the "neutral

principles of law" analysis to which civil courts are limited, Jones v. Wolf, 443 U.S. 595, 604 (1979), and to embark on matters entirely irrelevant to the case.

Without expert assistance, the trial court and jury, unschooled in canon law, would be left on their own to interpret unfamiliar and ambiguous canons for answers to the legal issues of "lawful possessor" and "claim of right.[1] Indeed, the

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[1] The jury did not have to make an assumption (as the dissent suggests) that the pastor had "lawful possessor" authority to keep defendant from being disruptive at church services. The pastor, whose qualifications to give an expert opinion on his pastoral authority were not challenged, testified without objection that he had the requisite authority. Nor was defendant's claim of right to enter upon church premises to fulfill his religious duties disputed, only whether defendant's claim of right extended to include intimidation and harassment of the congregation.

In this appeal defendant does not question the sufficiency of the evidence. Instead, he claims that he should have been allowed to put the Code of Canon Law in evidence to dispute the pastor's testimony (although the canons cited by defendant are very opaque on this point), and to show he

introduction to the edition of the Code which defendant offered as evidence stresses the dangers of an untutored interpretation of the Code. "The canons are marked by a certain abstractness -- even artificiality. * * * In the concrete, therefore, it often admits of varying interpretations and applications. An exclusively literal reading can be especially risky in canon law." The Code of Canon Law: A Text and Commentary 13 (J. Coriden, T. Green & D. Heintschel eds. 1985). If defendant had called an expert on canon law to testify, portions of the Code (subject to requirements of relevancy and nonentanglement) might have been admissible.

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had a right to attend church to fulfill his religious obligations (a claim not disputed). Our opinion concedes the Code might have had some relevance to the case, provided, however, it was accompanied by expert interpretation. Here that proviso was not met, and that is all we decide and all we have been asked to decide.

See Stevens v. Roman Catholic Bishop of Fresno, 49 Cal.App.3d 877 (1975)(canon law experts testified on issue of whether a priest was the bishop's agent and acting within the scope of that agency when he was involved in an auto accident). But defendant did not do this, much less attempt to use the Code in his cross-examination of the pastor. Thus we hold that the trial court did not abuse its discretion in denying defendant's offer of proof.

Affirmed.

YETKA, Justice (dissenting)

I dissent. This case does not belong in a civil court, and the state should not have prosecuted it there. Once brought, however, the state had the burden of providing all the elements of the alleged offense. Both lower courts assumed, solely on the testimony of the priest, that the parish priest was the lawful possessor of the church property with the authority to exclude Zimmer indefinitely.[1] This

[1] The majority claims that the priest's "qualifications to give an expert opinion on his pastoral authority" went unchallenged by the defense and that, therefore, the court did not have to make an assumption as to the priest's "lawful possessor" status. Majority Op. at 5 n.1. If this is true, however, it is only because the court excluded the Code of Canon Law, which directly controverted the pastor's testimony regarding his authority. Moreover, the majority makes the wholly unremarkable assertion that Zimmer's claim of right does not extend "to include intimidation and harassment of the congregation." Id. No one disputes the priest's authority to bar a parishioner who is unruly, intimidating or harassing. Thus, Zimmer's claim of right to

assumption was erroneous and an abuse of discretion. The majority opinion today compounds this error by making the same assumption, choosing instead to characterize Zimmer's offer of proof as irrelevant or foundationally inadequate. However, the majority's analysis is both inaccurate and inconsistent with precedent of this court and the United States Supreme Court. In my view, the majority sidesteps the central issue in this case. Therefore, I would reverse and dismiss the charges against Zimmer.

The first amendment prohibits civil courts from deciding ecclesiastical or doctrinal disputes. Piletich v. Deretich, 328 N.W.2d 696, 699 (Minn. 1982) (citing Maryland & Virginia Eldership of the Churches of God v. Church of God at

---

be on the premises in the future was disputed, and he should have been allowed to use the Code to support that claim.

Sharpsburg, 396 U.S. 367, 368-70 (1970)). Under this principle, civil courts must "defer to adjudications by the highest tribunal in a 'hierarchical' church organization on issues of religious doctrine or policy (form of government)." Id. at 699[2] (citing Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 724-25 (1976)).

In this case, I agree with the majority that the court is not asked to resolve an issue of religious doctrine. Rather, it is asked to enforce the criminal trespass law of the State of Minnesota. As a simple trespass action, there is no first amendment prohibition on the state's prosecution of

---

[2] "Hierarchical" is the opposite of "congregational" in this context. The distinction refers to whether there is a central authority to which local congregations are subject. See Ellman, Driven from the Tribunal: Judicial Resolution of Internal Church Disputes, 69 Cal. L. Rev. 1378, 1384 n.19 (1981). No one here disputes that the Roman Catholic Church is "hierarchical."

the alleged offense. However, the majority's analysis is incomplete: the first amendment prohibition on a civil court's deciding religious issues extends to matters of polity as well. This case could not fall more squarely in this category of internal church governance. In order for the state to prove two elements of the trespass action, it must establish matters that can only be characterized as ones of church polity; namely, whether the priest had the authority to bar Zimmer from the property and whether Zimmer, as a parishioner, had a good faith claim of right to be on the church premises. Not only are these issues of internal church governance, but resolution of the issues requires an authoritative interpretation of the Code of Canon Law.[3] In my view, it was error for

[3] What the majority leaves out of its reference to the introduction of the canon law text, submitted as an offer of proof in this case, supports this view:

the trial court to attempt to resolve the issues in the first instance. Once it did, however, it unfairly denied Zimmer the right to interpose his defense by not receiving the Code into evidence. It was particularly egregious here because the record indicates that the complainant-priest lacked the approval of either the church council or his bishop to act as he did.

> [The Code] touches on nearly every structure of the Roman Catholic Church in fewer than two thousand canons, many of which contain not statutes or laws but exhortative or theological statements more properly classified as "a-juridic."* * *
>
> To achieve church order, the Code frequently relies on the exercise of discretion by ecclesiastical administrators in applying the law to concrete situations. The administrator is called upon to humanize and accommodate the legislator's canonical principles, set them in their proper context, apply them equitably, and dispense from them whenever pastorally necessary.

The Code of Canon Law: A Text and Commentary11 (J. Coriden, T. Green & D. Heintschel eds. 1985).

In circumventing the central issue presented here, the majority contends that, without expert assistance, the trial court and jury could not interpret "unfamiliar" and "ambiguous" canons to resolve the "legal" issues, the issue here is whether Zimmer had a good-faith belief, based on the canons, that he had a claim of right to be on the property. At trial, Zimmer was not even allowed to testify that his belief was based on the canons. Thus even if this case did not involve issues of church polity, I would allow the defense to use the Code at trial.

In my view, once the trial court allowed prosecution of this action to proceed, the nature of the priest/parish/parishioner relationship required the court to consider the Code of Canon Law to resolve the lawful possessor and claim-of-right issues. In adjudicating church property and membership disputes,

this court and the United States Supreme Court have adopted a "neutral-principles-of-law"analysis. Piletich, 328 N.W.2d at 701; Jones v. Wolf, 443 U.S. 595, 604 (1979). This analysis allows civil courts to decide issues concerning ownership and control of church property using "the language of deeds, the terms of local church charters, state statutes governing the holding of church property, provisions in the constitution of the general church * * * and general rules of property law." Piletich, 328 N.W.2d at 700. According to the Court,

> The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general--flexibility in ordering private rights

> and obligations to reflect the intentions of the parties.

Jones v. Wolf, 443 U.S. at 603.

As in a property or membership dispute, the court may apply a neutral-principles analysis in this case. Contrary to the majority's assertion, a jury's examination of the Code would not be "an invitation" to go beyond a "neutral-principles" analysis and embark on the consideration of doctrinal matters. Rather, a civil court may examine religious documents in property dispute cases as long as it

> take[s] special care to scrutinize the document in purely secular terms, and not to rely on religious precepts. * * * If in such a case the interpretation of the instruments * * * would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

Jones, 443 U.S. at 604. Thus, the inquiry becomes whether it would be possible for a civil court to "scrutinize the document in

purely secular terms" or whether the civil court should defer to the "authoritative ecclesiastical body" for resolution of the issues. Interestingly, both a majority of this court and the trial court chose to ignore either inquiry in order to dispose of the case.

In my view, the canons are relevant, along with other evidence, to a "neutral-principles" determination of whether the church as vested its priests with the authority to bar parishioners from church property. See Stevens v. Roman Catholic Bishop of Fresno, 40 Cal.App.3d 877, 883 (1975)(canon law received into evidence by way of expert testimony); Jonathan v. Shea, 19 Cal.App.3d 328, 335 (1971) (provisions of canon law of Russian Orthodox Church considered without expert testimony); Bishop & Diocese of Colorado v. Mote, 716 P.2d 85, 108 (Colo.), cert. denied, 479 U.S. 826 (1986) (canons of local and general church

considered by court without expert assistance in property dispute between factions of Episcopal Church); Filetto v. St. Mary of the Assumption Church of Binghamton, 305 N.Y.S.2d 403, 406 (N.Y. Sup. Ct. 1969) (canon law considered in property dispute between factions in Roman Catholic Church). In addition, the canons, "scrutinized in purely secular terms," are determinative of the parishioner's claim of right. In this case, the jury should have been allowed to consider the canons as they related to Zimmer's reasonable belief that he had a right to be on the property. State v. Brechon, 352 N.W.2d 745, 750 (Minn. 1984) (defendant may offer evidence of reasonableness of belief in claim of right). Thus, I would have allowed Zimmer to base his claim-of-right defense on the canons.

Accordingly, I would reverse and dismiss the charges. The issues would be best resolved by an authoritative

ecclesiastical body within the church hierarchy.

GARDEBRING, Justice (dissenting)

I concur with that position of the dissent which concludes that exclusion of the relevant provisions of the Code of Canon Law was error. The "neutral-principles-of-law" doctrine, as enunciated by this court in Piletich v. Deretich, 328 N.W.2d 696 (Minn. 1982), allows courts to consider church-originated documents, including local church charters and general church constitutions, in examining questions of the "control of church property," which is precisely the issue raised by the appellant's claim-of-right defense. The Code of Canon Law should have been admitted.

However, I believe that the dissent goes too far in concluding that this criminal trespass action involves a matter of church polity, and therefore, its consideration by the civil courts is prohibited by the first amendment. I believe it is more properly characterized as

a matter which is not * * * doctrinal, nor * * * committed to adjudication by the highest tribunal in a hierarchical church * * * Id. at 700. I find no first amendment barrier to consideration by the civil courts.

Therefore, I would remand the matter to the trial court for retrial, directing that the Code of Canon Law be admitted into evidence on the lawful possessor and claim-of-right issues.

(2)

DEC 2 19
OFFICE OF THE CLE

No. 92-776

In the Supreme Court of the United States

October Term, 1992

HENRY SYLVESTER ZIMMER,

Petitioner,

vs.

THE STATE OF MINNESOTA

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the Minnesota Supreme Court correctly upheld the exclusion of the Code of Canon Law of the Roman Catholic Church on the grounds that the proffered evidence was irrelevant and unfairly prejudicial.

PARTIES

The petition for writ of certiorari contains a list of the parties *See* Supreme Court Rule 24.2

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STATEMENT OF THE CASE

On January 7, 1991 the State of Minnesota (City of Columbia Heights) initiated a jury trial against the petitioner, Henry Sylvester Zimmer, charging same with two (2) criminal counts of trespassing related to separate incidents occurring on April 4, 1990 and July 4, 1990. The petitioner and his counsel chose to have the separate incidents consolidated into one trial. The trial was conducted before the Honorable Spencer J. Sokolowski, District Court Judge, Tenth Judicial District, Anoka County Courthouse, Anoka, Minnesota.

Just prior to trial, petitioner asked to have marked for evidence a copy of the Articles of Incorporation of the Church of the Immaculate Conception and a copy of the Code of Canon Law of the Roman Catholic Church. The State of Minnesota stipulated to the Articles of Incorporation, but objected to the admissability of the Canon Law on the basis that such evidence was not relevant and would unduly confuse the issues and the jury. The Honorable Spencer J. Sokolowski noted that the same issues were addressed in a pretrial motion and the order dated January 3, 1991 the Honorable Judge Stanley Thorup indicated that the Code of Canon Law of the Roman Catholic Church was not relevant. (Reprinted at page A-1 of the Respondent's Appendix, abbreviated hereinafter as A.___ .) The Honorable Spencer J. Sokolowski then ruled that such evidence would be excluded for trial as well. (Citations to the trial transcript are hereinafter abbreviated T.___ . (T.5-7). The Court of Appeals affirmed (Reprinted at A-1 of Petitioner's Appendix, hereinafter abbreviated Pet. A.___). The issue of whether the trial court erred in refusing to admit the Code of Canon Law of the Roman Catholic Church was appealed and the Minnesota Supreme Court affirmed the lower courts' rulings. (Pet. A.___).

FACTS

In 1981, Father Walter Sochacki was appointed pastor of the Church of the Immaculate Conception. In recent years, petitioner, Henry Sylvester Zimmer, has been involved in many disputes with Father Sochacki and the Church of the Immaculate Conception. On several occasions, petitioner handed out leaflets and pamphlets at services and outside the parish. (T. 50). Petitioner also started carrying a two foot crucifix to mass. (T. 51).

Father Sochacki asked petitioner several times to stop harassing and disturbing parishioners. (T. 39). Father Sochacki consulted the parish council regarding petitioner's behavior. (T. 32). After consultation with parish council, Father Sochacki decided to ban petitioner from the church. On April 3, 1990, after repeated attempts to reconcile the situation with petitioner (T. 39), Father Sochacki handed petitioner the following letter:

> Dear Mr. Zimmer:
>
> During the past two weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily mass. You have been a constant source of fear to many of our parishioners.
>
> With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property (City Ordinance 609.605). If you chose to return to the property, you will be arrested.
>
> It is only after long deliberation and consultation with our Parish council that I have come to this conclusion.
>
> Your presence has been a constant intimidation and harassment over the past two year. It is our feeling that this must stop. Please be advised of our intention.
>
> Sincerely,
> The Reverend Walter L. Sochacki
> The Pastor

cc: Columbia Heights Police Department
(A. 8)

After handing the letter to the petitioner, Father Sochacki also orally informed him of the contents of the letter. (T. 30).

On April 4, the day after petitioner received notice that he was no longer welcome on church property, petitioner entered the parish school. (T. 30). Father Sochacki informed petitioner that the petitioner would have to leave the church property. (T. 31). While Father Sochacki called the police, petitioner returned to his car. (T. 31). After speaking with petitioner, the police tagged petitioner for trespass.

On July 4, petitioner returned to the church property to attend mass. (T. 32). Father Sochacki was unable to immediately call the police because he had to conduct mass. (T. 32). At the conclusion of mass, Father Sochacki called the police. (T. 32). When the police arrived, they tagged petitioner for trespass. (T. 32).

After a jury trial, petitioner was convicted on two counts of trespass arising out of the April 4th and July 4th incidents. The Court of Appeals reversed the conviction for the April 4th trespass but affirmed the conviction for the July 4th trespass. On appeal, the petitioner raised numerous issues including, the issue of admissability of the Code of Canon Law of the Roman Catholic Church. The Minnesota Court of Appeals held that the Code of Canon Law of the Roman Catholic Church was irrelevant in this case. (Pet. A.22). The Minnesota Supreme Court affirmed the conviction and the inadmissability of the Code of Canon Law of the Roman Catholic Church, holding, "any potential probative value of the Code was clearly outweighed by the prejudice and confusion which would have ensued from the manner in which the defendant intended to use this evidence." (Pet. A. 27-8)

SUMMARY OF ARGUMENTS

The Respondent, the State of Minnesota, requests denial of review for the simple reason that there is no need for the Supreme Court to hear this case. Review of evidentiary rulings is done on an abuse of discretion standard. There was clearly no abuse of discretion by the trial judge in this matter. The proffered evidence was both unfairly prejudicial and irrelevant. There is no need to examine religious documents when trying a criminal case.

ARGUMENT

A. The Code of Canon Law of the Roman Catholic Church was properly excluded on the grounds of unfair prejudice and irrelevance.

When examining the ruling of a lower court on an evidentiary matter, the scope of review is an abuse of discretion standard. *State v. Olson,* 299 N.W.2d 89, 101 (Minn. 1980) *cert. denied* 449 U.S. 1132, 101 S.Ct. 954, 67 L.Ed.2d 119. *See also, State v. Flores,* 418 N.W.2d 150 (Minn. 1988). A trial court has very broad discretion in applying Rule 403 and, absent abuse, the exercise of its discretion wil not be disturbed on appeal. *United States v. Martin,* 599 F.2d 880, 889 (9th Cir.), *cert. denied,* 441 U.S. 962, 99 S.Ct. 2407, 60 L.Ed.2d 1067 (1979). Respondent contends there was no abuse here.

The courts have consistently held that the trial court has broad discretion in deciding evidentiary matters, particularly what is relevant and what may be unfairly prejudicial. "Whether to exclude evidence under Rule 403 is a determination within the sound discretion of the trial Court and [the] Court will not disturb its ruling absent a showing that such a ruling was so arbitrary that it could not have resulted from a reasoned decision." *Smith v. Pass,* 382 S.E.2d 781, 786 (N.C.App. 1989). The decision of the trial court in this case was not clearly erroneous, nor did the judge abuse his discretion in excluding the Code of Canon Law of the Roman Catholic Church; therefore, the

conviction of the petitioner should be upheld. The Minnesota Supreme Court, in affirming the lower courts' rulings, held, "any potential probative value of the Code was clearly outweighed by the prejudice and confusion which would have ensued from the manner in which the defendant intended to use this evidence." (Pet. A. 27-8).

The petitioner intended to offer into evidence the entire Code of Canon Law of the Roman Catholic Church consisting of 1,752 canons. The petitioner further intended to call the jury's attention to a few select canons. There was no attempt made by the petitioner to introduce this evidence through the use of expert testimony nor to assist the jury in any way in interpreting the meanings of the canons which are "couched in terminology unfamiliar to lay people." (Pet. A. 28). Without expert testimony a jury would be likely, given the size and the nature of the Code, to rely on the petitioner's interpretation of the canons' meaning. The nature of the Code is abstract and as the Minnesota Supreme Court pointed out in its opinion, (Pet. A. 30) the introduction of the edition of the Code that the petitioner sought to introduce, stresses the dangers of an untutored interpretation of the Code. "The canons are marked by certain abstractness . . . even artificiality * * * In the concrete, therefore, it often admits of varying interepretations and applications. An exclusively literal reading can be especially risky in canon law." *The Code of Canon Law: A Text and Commentary* 13 (J. Coriden, T. Green & D. Heinschel eds. 1985). The effect of this type of evidence would be confusing, misleading, and unfairly prejudicial. The jury would be forced to look at only those sections which had been previously indicated and interpreted. It would be impossible for them to interpret the Code fairly by looking at it in its entirety.

It is clear to see that the introduction of the Code in this manner would have confused or misled the jury and been unfairly prejudicial to the State. The trial court did not abuse its discretion by excluding this evidence.

B. Minnesota trespass law alone should decide this matter and should not be construed according to the Code of Canon Law of the Roman Catholic Church.

"Religious principles do not justify any person becoming a law unto himself or to defy enlightened sentiments of mankind, and if religious scruples drive men to civil or criminal disobedience, the State may impose punishment." *United States v. Pence,* 410 F.2d 557, 563 (8th Cir. 1969).

Petitioner was convicted under Minnesota criminal trespass law for trespassing on church property. Minnesota Statute § 609.605, subd. 1(b) (3) states:

> 609.605 **TRESPASS**
>
> **Subdivision 1. Mideameanor**
>
> (b)A person is guilty of a misdeameanor if the person intentionally:
>
> (3)trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor.

The trial court properly excluded Catholic Church law from the determination of "lawful possession" status and "claim of right" issues since the evidence would confuse the issues, mislead the jury, and lacks relevance in a criminal action. *See,* Minn. R. Evid. 402, 403. The Appellate Court affirmed the exclusion on the ground of irrelevance. (Pet. A. 7-8).

The petitioner states that the Code of Canon Law of the Roman Catholic Church was material to the issues of the case. (Petitioner's Petition p. 18). However, since this was a criminal prosecution against petitioner for violation of the Minnesota trespass statute, an examination of the issues arising out of this statute will show that the evidence was irrelevant.

C. Trial court properly excluded the Code of Canon Law as irrelevant because Father Sochacki was a lawful possessor of church property according to Minnesota law.

In *State v. Quinnell,* 277 Minn. 63, 67-69, 151 N.W.2d 598, 602-603 (1967), this Court held that one making the demand to leave must be, in some sense, the agent of the landowner. Father Sochacki was appointed Pastor of the Church of the Immaculate Conception by the Archbishop of St. Paul and Minneapolis, the Most Reverend John R. Roach, D.D. on January 23, 1981 to manage the church. (T. 5). Father Sochacki is the agent of the landowner i.e., the catholic church. Therefore, under *Quinnell,* Father Sochacki is the lawful possessor who may demand that a trespasser leave.

As acting Pastor, Father Sochacki has the general authorization to take the legal steps necessary for the ordinary administration of the parish, including the power to quell disturbances. The petitioner was determined to be a disturbance to the orderly administration of the church's affairs by the pastor and the Church Council. Accordingly, by virtue of this appointment and by dicatate of the Church Council, Reverend Sochacki clearly possessed the authority to ban appellant from the church premises. Evidence of this authority was presented by the State to the jury, including the call letter Father Sochacki received from Archbishop John R. Roach. (A. 9). The jury determined that Father Sochacki has possessor status under the Minnesota trespass law. The Court of Appeals affirmed this decision. (Pet. A. 19).

D. According to Minnesota trespass law, petitioner entered church property without a claim of right.

The petitioner relies on the "claim of right" defense as established in *State v. Hoyt,* 304 N.W.2d 884 (Minn. 1981). In *Hoyt,* the Minnesota Supreme Court defined the

"claim of right" defense as:

> The claim of right is a defense only if it is bona fide. The reason for allowing a defendant in a criminal trespass case the defense of a bona fide belief of claim of right is that the law generally does not punish persons who commit an offense without criminal intent. A bona fide belief, i.e., a good faith claim of right, negatives the criminal intent required by Minn. Stat. § 609.605(5) (1980).

However, the petitioner's reliance upon the *Hoyt* "claim of right" defense is ill founded because *Hoyt* is clearly distinguishable from the case at hand. In *Hoyt,* Minn. Stat. § 144.651 (1980) and 42 C.F.R. 405.1121(k) gave the guardian of the nursing home resident the right to determine who may associate, or visit, the resident. *Id.* at 888-889. The defendant was deprived of a property right inextricably linked to a personal right, i.e., the right of free association. The defendant was only at that particular nursing home to see a particular resident. In effect, the defendant could not have gone to another nursing home to visit the resident as the resident of the home was "brain dead" and confined to that particular nursing home.

The case at hand deals with the violation of a criminal statute. The petitioner can celebrate mass at any time and at any place. Due to the petitioner's conduct (not religious beliefs) and violation of a criminal statute, the only place that petitioner can not celebrate mass was at the Church of the Immaculate Conception. Unlike *Hoyt*, the site of worship does not eliminate or affect the petitioner's right or ability to celebrate mass. As the petitioner testified at trial:

> Q. You're free to attend any other Roman Catholic Church in this state?
>
> A. Every other Catholic Church in this country.
>
> Q. Are you free to attend any other Roman Catholic Church in this country?

A. Absolutely.

Q. You're free to attend mass in any other church in this state?

A. Absolutely.

(T. 62).

As admitted, the petitioner is free to attend any other church to worship. His status as a member of the Roman Catholic Church was not affected by the actions of Father Walter Sochacki.

Even if the Court finds that the petitioner's reliance on the "claim of right" doctrine is proper, the "claim of right" doctrine is limited under Minnesota law. Under Minnesota trespass law, claim of right refers to an individual's status as an owner, tenant, lessee, licensee or invitee. *Hoyt,* at 889. Here, although the petitioner may have had at one time a claim of right to be on the property as an invitee, that invitation has been revoked by virtue of Father Sochacki's letter to the petitioner dated April 3, 1991. (Pet. A. 23). Protecting other parishioners and preventing repeat offenses are legitimate objectives for revoking a claim of right, as much as they are objectives of sentencing. (Pet. A. 19). The state presented clear evidence to the jury in this case that petitioner had no claim of right under Minnesota law.

Once the State presents evidence that the petitioner has no claim of right, the burden then shifts to the petitioner who may offer evidence of his **reasonable** belief that he has a property right, such as that of an owner, tenant, lessee, licensee or invitee. *Gaetano v. United States,* 406 A.2d 1291, 1294 (D.C. 1979) (emphasis added). The petitioner attempted to satisfy the shifted burden by relying on the "claim of right" defense in *Hoyt.*

However, this "claim of right defense is limited. Subjective reasons not related to a claimed property right or permission are irrelevant and immaterial to the issue of claim of right. *State v. Brechon,* 352 N.W.2d 745, 750 (Minn. 1984).

Therefore, the petitioner must provide evidence to satisfy the objective standard of "reasonableness". All of petitioner's arguments were subjective reasons not related to a claimed property right, including petitioner's intended use of the Code of Canon Law of the Roman Catholic Church.

E. Under the "Neutral Principles of Law" approach for resolving church property disputes the trial court properly excluded the Roman Cathlic Code of Canon Law.

The petitioner asserts that Canon Law is relevant to this case and cites several cases in support. However, it is critical to note that all of the case law which petitioner cites in support of his argument pertains to civil causes of action. These cases all involve "[l]aws concerned with civil or private rights and remedies, as contrasted with criminal laws." *See,* Black's Law Dictionary, *Civil Law* (5th Ed. 1979). *See, Lindstrom v. Tell,* 131 Minn. 203, 154 N.W.2d 969 (1915) (civil case involving congregational dispute over expulsion of a pastor); *Filetto v. St. Mary of Assumption Church,* 61 Misc.2d 278, 305 N.Y.S.2d 403 (Sup. Ct. 1969) (civil case to have merger of church parish declared a nullity); *Bishop and Diocese of Colorado v. Mote,* 716 P2d 85 (Colo. 1986) (civil case involving church merger). As a result, petitioner's reliance on these cases and arguments stemming from same are critically flawed, as these cases are clearly distinguishable from the case at hand.

The petitioner is mischaracterizing the actual issue by arguing the relevance and admissability of the Code of Canon Law of the Roman Catholic Church in internal doctrinal disputes, but that is not the case before this Court. The involvement of the Church of the Immaculate Conception and Father Sochacki is in the role of a victim of a crime, not as a party in some civil suit. In such cases criminal law should be applied. "When an individual's behavior is determined to be disruptive by a lawful possessor of the premises upon which the individual's conduct is

exercised, criminal sanctions may be imposed and are not prohibited by the State or Federal Constitution." *State v. Olson,* 178 N.W.2d 230 (Minn. 1970).

Even if the court finds that the petitioner's reliance on these civil cases is appropriate, the court must still uphold the petitioner's conviction, and the inadmissability of the Code of Canon Law of the Roman Catholic Church for two reasons. The State readily agrees with the petitioner and admits that "civil courts may not consitutionally decide ecclesiastical or doctrinal disputes, and the First Amendment requires that civil courts defer adjudications by highest tribunal and hierarchial church organization on issues of religious doctrine or policy." *Pallerson v. Bethel Baptist Church,* 389 N.W.2d 729 (Minn.App. 1986); *see also, Piletich v. Deretich,* 328 N.W.2d 696 (1982) (First Amendment prohibits civil courts from resolving church disputes on the basis of religious doctrine or practice). However, the case at hand is not dealing with "ecclesiastical or doctrinal disputes." Rather, this is a criminal action and was properly tried in a criminal court. The Code of Canon Law of the Roman Catholic Church simply does not govern over criminal cases.

Second, even if the Court decides that this case involves issues other than the essential criminal statutes, the Court should affirm the petitioner's conviction and the inadmissability of the Code of Canon Law of the Roman Catholic Church under the "neutral principles of law" doctrine . This Court, in *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020 (1979), approved the "neutral principles of law" approach when deciding church property disputes. *Id.* at 603, 99 S.Ct. at 3025. The Minnesota Court of Appeals succinctly noted that this "neutral principles of law" approach had been adopted by Minnesota Courts and relied on deeds, local church charters, and state statutes, thus avoiding the constitutional pitfalls of deciding disputes on the basis of church doctrine. (Pet. A. 8). In a criminal trespass action, there simply is no relevance of religious doctrines such as the Code of

Canon Law of the Roman Catholic Church. The admission of same would force a jury into an examination of Roman Catholic religious beliefs with virtually no enlightenment on the issues of criminal trespass law. The trial court properly avoided this constitutional pitfall by excluding the Code of Canon Law of the Roman Catholic Church at trial. Both the Minnesota Court of Appeals and the Minnesota Supreme Court affirmed this decision.

CONCLUSION

The appellate courts in this case have adhered to this Court's method of analysis in concluding that the Code of Canon Law of the Roman Catholic Church be excluded as evidence in this case. The narrow issue and holdings of the prior courts on an evidentiary ruling which follows well-established legal principles hardly constitutes an important federal question. Further review by this Court is not necessary.

For all the reasons stated above, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

Kalina, Wills, Woods, Gisvold & Clark

Dated:
December 2, 1992

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APPENDIX

Hon. Judge Stanley Thorup's Pre-trial Order and Memo A-1

Letter from Father Walter Sochacki to Henry Zimmer A-7

Father Sochacki's Call Letter to the Church of the Immaculate Conception A-8

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota
Plaintiff,

vs.

ORDER

Henry Sylvester Zimmer,
Defendant.

Court File No. K3-90-7232
K5-90-7293

The above-entitled matter came on for hearing before the undersigned Judge of District Court on November 19, 1990 pursuant to Defendant's motion to dismiss two charges of trespassing based on a constitutional challenge to Minn. Stat. 609.05 subd. 1(b) (3) (1990) and lack of probable cause to make the arrest.

Paul Thompson, Esq., Asst. City Attorney, 4111 Central Ave., Suite 102S, Columbia Heights, MN 55421, appeared on behalf of the Plaintiff;

John E. Mack, Esq., R & J Bldg., Box 302, New London, MN 56273, appeared with and on behalf of Defendant.

The court having heard all the arguments now makes the following:

ORDER

1. Defendant's motion to dismiss the complaint based on the constitutionality of Minn. Stat. 609.605 subd. 1(b)(3) is denied.

2. Defendant's motion to dismiss the complaint for lack of probable cause is denied.

3. Defendant's motion for consolidation of cases K3-90-7232 and K5-90-9273 is granted.

4. The attached memorandum is made part of this order.

BY THE COURT:

Dated: January 3, 1991

Stanley N. Thorup
Judge of District Court
Tenth Judicial District

MEMORANDUM

FACTS

Henry Zimmer (herein after referred to as defendant) was a member of Immaculate Conception Catholic Parish in Columbia Heights, Minnesota at all times relevant to this proceeding. On April 3, 1990, Reverend Walter L. Sohacki, Pastor of the aforementioned Parish, delivered to the defendant the following letter:

> Dear Mr. Zimmer:
>
> During the past weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily masses. You have been a constant source of fear to many of our parishioners.
>
> With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property (City Ordinance 609.605). If you chose to

return to the property, you will be arrested.

It is only after long deliberation and consultation with our Parish Council that I have come to this conclusion. Your presence has been a constant intimidation and harassment over the past two years. It is our feeling that this must stop. Please be advised of our intention.

On April 4, 1990, after receipt of the letter, defendant returned to the lobby area of Immaculate Conception Church. Police were notified and Officer Bartlett of the Columbia Heights Police Department responded to the call. Upon arriving at the Church, Officer Bartlett spoke with Rev. Sohacki who pointed out defendant seated in an automobile across from the church.

On July 4, 1990, defendant once more returned to the church to attend mass. The police were again notified, but before the arrival of the officer, defendant left the premises.

Defendant was charged by formal complaint with two separate counts of trespass in violation of Minn. Stat. 609.605 subd 1(5) (NOW Minn. Stat. 609.605 subd. 1(b) (3) (1990)) on May 25, 1990 and August 22, respectively.

The defendant now moves to dismiss the charges based first on the unconstitutionality of Minn. Stat. 609.605 subd. 1(b) (3): more specifically, that the use of civil law to enforce a doctrinal dispute is an unconstitutional entanglement of State authority with church affairs; and secondly, that expulsion by a priest or minister does not satisfy the statutory element of "Lawful Possessor" and accordingly the State has failed to establish probable cause for the arrests.

ANALYSIS

The first argument to be addressed by this court is the constitutionality of Minn. Stat. 609.605 subd. 1(b) (3) when the complainant is a religious entity.

"When an individual's behavior is determined to be

disruptive by a lawful possessor of the premises upon which the individuals conduct is exercised, criminal sanctions may be imposed and are not prohibited by the State of Federal Constitution." *State v. Olson,* 178 N.W.2d 230 (Minn. 1970).

In the case before the bar, the defendant mischaracterizes the actual issue to be decided by arguing that the court must interpret the Canon Law of the Catholic Church in order to determine if probable cause existed for the arrest. While this court does not have jurisdiction to decide internal religious doctrinal disputes, it does have jurisdiction to decide criminal matters. Here, the only involvement of the church is the role of the victim in a criminal matter, a situation in which this court clearly has jurisdiction.

The only issue before this court is whether the state has met their burden of making a prima facie case as to each element of Minn. Stat. 609.605 subd. 1(b) (3) (1990).

The statute under which defendant has been charged, reads as follows:

> 609.605. Trespass
>
> Subdivision 1. Misdemeanor.
>
> (b) A person is guilty of a misdemeanor if the person intentionally:
>
> (3) trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor.

Minn. Stat. 609.605 subd. (1) (b) (3) as amended 1990.

In order to meet their burden, the state must prove that (1) defendant intentionally entered the property of another (2) without claim of right and (3) refused to depart upon demand of a lawful possessor.

There is no dispute that defendant intentionally entered onto the property of Immaculate Conception Church located in Columbia Heights, Anoka County, Minnesota.

The primary issue that defendant rasies is whether

Reverend Sohacki was a "lawful possessor" of the property for purposes of demanding defendant's departure from church premises. While the Reverend is not the sole owner of the property, he is the equivalent of a caretaker or store manager. Reverend Sohacki was appointed Pastor of Immaculate Conception in 1981. Encompassed within the power of the appointment is the authority to attend to the ordinary administration of the parish: Defendant was determined by the Pastor and Church Council to be a distrubance to the orderly administration of the church's affairs. Accordingly, by virtue of his appointment and by dictate of the church council, Reverend Sohacki clearly possessed the authority to ban defendant from the church premises.

The final issue for the court to determine is whether defendant entered the property without a claim of right. In Minnesota trespass law, claim of right refers to an individuals status as an owner, tenant, lessee or licensee. See: *State v. Hoyt,* 304 NW.2d 884 (Minn. 1981). Here, although defendant may have had a claim of right to be on the property as an invitee, that invitation had been revoked by virtue of Reverend Sohacki's letter to the defendant.

Once the state presents evidence that defendant has no claim of right,the burden then shifts to the defendant who may offer evidence of his reasonable belief that he has a property right, such as that of an owner, lessee, licensee or invitee. See: *Gaetano V. United States,* 406 A.2d 1291, 1294 (D.C. 1979). Subjective reasons not related to a claimed property right or permission are irrelevant and immaterial to the issue of claim of right. *State v. Brechon,* 352 N.W.2d 745, 750 (Minn. 1984).

Defendant has been precluded from attending mass at Immaculate Conception parish only. He is not prohibited from attending mass at any other parish of his choice. Accordingly, defendant's argument that he was denied his right to attend mass is immaterial to this analysis.

The court finds that the State has shown probable

cause to proceed with the charges of trespass as listed in the complaint.

S.N.T.

CHURCH of the IMMACULATE CONCEPTION
4030 Jackson St. N.E.
Columbia Heights, Minesota 55421

April 3, 1990

Mr. Henry Zimmer
4021 California Street N.E.
Minneapolis, MN 55421

Dear Mr. Zimmer:

During the past weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily mass. You have been a constant source of fear to many of our parishioners.

With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property (City Ordinance 609.605). If you chose to return to the property, you will be arrested.

It is only after long deliberation and consultation with our Parish Council that I have come to this conclusion. Your presence has been a constant intimidation and harassment over the past two years. It is our feeling that this must stop. Please be advised of our intention.

Sincerely,

The Reverend Walter L. Sochacki
The Pastor

cc: Columbia Heights Police Department

January 23, 1981

Reverend Walter L. Sochacki
Church of Saint Mary of the Lake
Lane North
Plymouth, Minnesota 55441

Dear Father Sochacki,

With this letter I am pleased to transfer you from the Co-pastorate of the Church of Saint Mary of the Lake, Plymouth, and appoint you Pastor of the Church of the Immaculate Conception, Columbia Heights, effective February 26, 1981.

In accordance with Canon 1406 § of the Code of Canon Law, you understand that you are required to make your Profession of Faith before fulfilling any of your duties as Pastor. Any priest of the Archdiocese may witness it as my delegate. This document should be returned to the Personnel Office at the Chancery before you take up your new responsibilities.

Further, I dispense you from all other formalities such as may be required under Canon 1444 for taking canonical possession of your parish.

This appointment will be published in The Catholic Bulletin of February 20, 1981.

In particular, Walt, I want to thank you for the excellent work that you have done these past years. You and Father Kegler have done an excellent job at the Church of Saint Mary in Plymouth. In expressing my appreciation I am sure that I speak also for the people who you have served.

Finally, and most importantly, I pray that Almighty God will bless you richly and with a deep sense of satisfaction

and joy as you begin to minister at Immaculate Conception.

Sincerely yours in Christ,

Most Reverend John R. Roach, D.D.
Archbishop of Saint Paul and Minneapolis

Encl.

cc: Fr. Kegler, office, Fr. Wajda